

RETURN TO OS REGISTRY

10 May 1974

MEMORANDUM FOR: Deputy Director of Security (PSI)  
SUBJECT : Legal Issues, Interrogation Branch

1. This memorandum transmits questions of the polygraph examiners about the legal issues associated with conducting polygraph interviews. If you approve we would like to pass them to the General Counsel for answers.

- a. A person taking a polygraph test is asked to sign an agreement which says in part to the effect that:  
"Having been informed of my rights  
. . . I agree to take a polygraph test."  
What are the person's "rights"?  
Who informs him of his "rights"?
- b. If a person admits to criminal action in response to our question: "Have you committed any major crime?", what are our legal responsibilities as polygraph officers to report this information?
- c. Do our questions about crimes, use of drugs and homosexual activity transgress the law against getting a person to testify against himself since these are all criminal acts in the state of Virginia and the District of Columbia?
- d. Is there ground for concern about self-incrimination in view of the fact that "admissions" by polygraph subjects are made to only one other person in the polygraph situation as used by the Agency? Would we have a legal ground

for prosecution if a person admitted to a major crime?

- e. What can the polygraph officer tell the person who asks if the information he reveals will be made available to anyone outside the Agency?
- f. How vulnerable is the individual examiner vis-a-vis a court suit brought by a polygraph subject? What protection can the Agency give to an examiner who is sued by a polygraph subject for invasion of privacy or denial of employment because of what was admitted.
- g. What can a polygraph officer say in response to the question: "Do I have to take this test to get a job with the Agency?" or "What happens if I don't take the test?"
- h. What is an examiner to do if a subject demands, as recently happened, that any note or record of what he said in the interview be destroyed because he believes the test to be an invasion of his privacy and claims he doesn't want to be employed?
- i. The Civil Service Commission has recently ruled that homosexuality, per se, is not grounds to deny employment under Civil Service regulations. We have recently had a case of a person openly admitting that he was a homosexual. What is the Agency position with regard to employment of homosexuals? Is there a "per se" rule in practice in CIA against employing homosexuals? Can the polygraph officer so state to individuals?

- j. What is the Agency's obligation to report criminal information to law-enforcement authorities? To withhold such information? What happens to the legal usefulness of such information by virtue of its having been first uncovered during a CIA polygraph interview?
- k. What is the relevance of the Fifth Amendment to the CIA polygraph interview -- regarding questions or admissions of criminal activity, adverse but non-criminal activity, the possibility of eliminating oneself from eligibility for CIA employment?
- l. Are there Constitutional points other than the Fifth Amendment which have a bearing on the CIA polygraph interview? If so, which are those which the examiner might find more significant or which he should be prepared to explain to his subject?
- m. The standard agreement that refers to the polygraph interview as being undertaken of one's own free will. Is this technically or legally correct? How is free will defined in this situation?
- n. Polygraph subjects and examiners at times refer to waiving one's right to some Constitutional protection. Can one in fact waive a Constitutional right?
- o. Can examiners' interpretation of polygraph charts in themselves be used as a basis for employment actions?
- p. The standard agreement sheet used by IS is dated 1957. It seems likely that a review of its content would be advisable.
- q. What are the legal parameters of the often - heard but vague - sounding expression "invasion of privacy." especially as it relates to CIA polygraph?

2. For years polygraph officers have side stepped responses to such questions or in some cases answered with his personal interpretation of what he thinks the Agency official position is or should be. Today's environment indicates that such evasive responses should not be necessary. There should be uniform, agreed on responses that can be provided as "official positions" of the CIA in response to such questions from individuals required to take the polygraph. Some of the questions reflect the polygraph officer's concern about his own vulnerability. These questions should be examined and a response provided that commits the Agency to a course of action or a statement that Agency action would be conditioned on the circumstances.

[REDACTED]  
Chief, Interrogation Branch

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